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12 UPS Ground Freight, Inc.

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF WASHINGTON

15 CHRISTOPHER A. SANTAMOUR,  
16 et al.,

17 Plaintiffs,

18 v.

19 UPS GROUND FREIGHT, INC.,

20 Defendant.

No. 2:17-CV-0196-TOR

STIPULATED PROTECTIVE  
ORDER

1 **STIPULATION**

2 Plaintiffs Christopher Santamour and John Peightal, by and through their  
3 undersigned counsel, and Defendant UPS Ground Freight, Inc. ("UPS  
4 Freight"), by and through its undersigned counsel, hereby agree to the entry of  
5 the Protective Order below.

6 DATED this 3rd day of October, 2017.

7  
8 s/ Charles N. Eberhardt

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Attorneys for Plaintiffs

1 **PROTECTIVE ORDER**

2 Pursuant to FRCP 26(c) and the stipulation of the parties, the Court  
3 hereby enters the following Protective Order.

4 **1. Confidential Matter**

5 a. As used herein, “Confidential Matter” shall mean any document,  
6 information, or specific portions thereof, furnished in the course of litigation—  
7 during discovery or otherwise—that both (1) is marked or stamped by a party  
8 as “Confidential” in accordance with subsection 1(b) below, and (2) contains  
9 the following:

10 i. Non-public and private personal information, including  
11 documents containing personal financial information or contact information; or

12 ii. Confidential and proprietary business information that  
13 provides the party with a business advantage over its competitors. To the extent  
14 that documents relate to matters that UPS Freight takes significant steps to  
15 protect in its daily operations, such as through the use of non-disclosure and  
16 confidentiality agreements with its employees (if any), such information can be  
17 designated as Confidential Matter.

18 b. The determination of whether produced material is Confidential  
19 Matter shall be made in the first instance by the party from whom discovery is  
20 sought. Each party that designates information or documents for protection  
21 under this agreement must take care to limit any such designation to specific  
22 material that qualifies under the appropriate standards. The designating party  
23 must designate for protection only those parts of material, documents, items, or  
24 oral or written communications that qualify as Confidential Matter, so that  
25 other portions of the material, documents, items, or communication for which  
26 protection is not warranted are not swept unjustifiably within the ambit of this  
27 Order.

1 Mass, indiscriminate, or routinized designations are prohibited.  
2 Designations that are shown to be clearly unjustified or that have been made  
3 for an improper purpose expose the designating party to sanctions. The  
4 protections conferred by this Order do not cover information that is in the  
5 public domain or becomes part of the public domain through litigation or  
6 otherwise.

7 If there is a disagreement between the parties as to whether particular  
8 produced materials have been properly designated as Confidential, the dispute  
9 may be resolved by the Court as provided for in this Order.

10 c. All documents, information, or things deemed Confidential Matter  
11 by a party shall be marked or stamped as “Confidential” or, to the extent  
12 Confidential Matter is disclosed in a deposition, by designating such matter as  
13 described in Section 3.

14 d. Any documents or information not designated as “Confidential”  
15 shall be excluded from this Order, provided, however, that inadvertent  
16 production of any document or information without a “Confidential”  
17 designation shall not by itself be deemed a waiver of confidentiality as to such  
18 matter, and a party thereafter may designate the same as “Confidential”  
19 promptly upon being advised of or discovering the inadvertent disclosure.  
20 Disclosure by any party of such matter prior to notice of the confidential nature  
21 thereof shall not be deemed a violation of this Order.

22 e. Except as expressly provided for in this Order, Confidential  
23 Matter and any information contained therein shall not be communicated or  
24 disclosed in any manner, directly or indirectly, to any person or entity, and may  
25 be used only for the prosecution or defense of this litigation and for no other  
26 purpose.

1           **2.     Permitted Disclosure of Confidential Matter**

2           a.     Confidential Matter may be disclosed to any party, to counsel for  
3 any party, and to other counsel and support staff assisting counsel in the  
4 conduct of this action, provided that Plaintiffs' counsel will only disclose  
5 Confidential Matter of other UPS Freight employees to the named Plaintiffs to  
6 the extent Plaintiffs' counsel deems necessary for the prosecution of this  
7 action. Confidential Matter may also be disclosed to the Court, Court  
8 personnel, and court reporters used in this litigation, provided the parties have  
9 followed the procedure set forth in Section 4. Nothing in this Order shall limit  
10 or prevent the use of any Confidential Matter in open court at hearings in, or  
11 during trial of, this action, provided, however, that such use shall not relieve  
12 the parties of their obligations to seek to file Confidential Matter under seal  
13 when called for by this Order.

14           b.     Confidential Matter may be disclosed in good faith to third party  
15 experts and consultants retained by a party to assist in preparation, settlement,  
16 trial, or appeal of this action. Confidential Matter may also be disclosed to  
17 persons whose depositions are noted or potential trial witnesses, as well as their  
18 counsel, only to the extent counsel for the disclosing party determines in good  
19 faith that it is reasonably necessary to do so. Prior to the disclosure of any  
20 Confidential Matter to any permitted third party, the person to whom the  
21 disclosure is to be made shall agree in writing, or on the record in the case of a  
22 deposition, to be bound by the terms of this Order by, respectively, (1) signing  
23 an agreement in the form of Attachment A hereto or (2) making a  
24 representation on the deposition record.

25           c.     Confidential Matter may also be disclosed to any other person  
26 upon written consent by the designating party.  
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1           **3. Use in Depositions**

2           A party may, either during a deposition or within thirty (30) days after  
3 receiving the deposition transcript, designate portions of that transcript, and  
4 exhibits thereto not already designated confidential, as “Confidential.”  
5 Confidential Matter within the deposition transcript may be designated by  
6 underlining the portions of the pages that are confidential and marking such  
7 pages with substantially the following legend: “Confidential—subject to  
8 protection pursuant to court order.”

9           **4. Use in Briefs, Exhibits, Testimony, and Other Documents**

10          The parties are free to designate any document not filed with the Court  
11 as “Confidential” and limit its dissemination and use. However, there is a  
12 strong presumption of public access to any document filed with the Court.  
13 Before filing Confidential Matter or discussing or referencing such  
14 Confidential Matter in court filings, the filing party shall confer with the  
15 designating party to determine whether the designating party will remove the  
16 Confidential designation, whether the Confidential Matter is both relevant and  
17 material to an issue before the Court, whether the document can be redacted to  
18 remove sensitive information that prompted its designation as Confidential  
19 Matter, or whether a motion to seal or stipulation and proposed order is  
20 warranted. (Any material filed with the Court must also be redacted as  
21 required by Federal Rule of Civil Procedure 5.2.) If agreement is not reached,  
22 the filing party may at its option either:

23           a.     provide five court days’ advance written notice to the designating  
24 party of the intent to submit Confidential Matter, identifying the specific  
25 Confidential Matter to be filed and the date of the filing, so that the designating  
26 party may file a motion to seal; if the designating party so moves on or before  
27 the date of filing, then the filing party shall redact Confidential Matter from his  
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1 or its public court filing (with an unredacted bench copy provided to chambers)  
2 or, if necessary, file documents containing Confidential Matter under seal; or

3 b. file a separate motion or stipulation seeking an order from the  
4 Court permitting the Confidential Matter to be filed under seal, so that the  
5 Court may make particular findings justifying the limitation on public access as  
6 may be appropriate.

7 The burden is on the party proposing that a document be sealed to  
8 provide the needed information so that the Court can determine whether all, a  
9 portion, or none of the document may be filed under seal. Court findings and  
10 conclusions reflecting the same and authorizing any sealing or redaction must  
11 also be filed.

## 12 **5. Confidentiality Challenge**

13 If a party challenges the “Confidential” designation of any document or  
14 information, it shall so notify the designating party in writing and provide that  
15 party five (5) court days in which to consider the challenge. The parties agree  
16 that, during that period, they will make a good faith effort to resolve any  
17 disputes concerning the treatment of Confidential Matter. If the matter has not  
18 been resolved, the party advocating confidentiality must move for such  
19 protection under Rule 26(c) within ten (10) court days from the notification of  
20 the challenge, or the designation shall be deemed abandoned.

## 21 **6. Termination**

22 Within 60 days after the termination of this action, including all appeals,  
23 each receiving party must return all confidential material to the producing  
24 party, including all copies, extracts and summaries thereof. Alternatively, the  
25 parties may agree upon appropriate methods of destruction.

26 Notwithstanding this provision, counsel are entitled to retain one  
27 archival copy of all documents filed with the Court, trial, deposition, and  
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1 hearing transcripts, correspondence, deposition and trial exhibits, expert  
2 reports, attorney work product, and consultant and expert work product, even if  
3 such materials contain Confidential Matter. To the extent retained documents  
4 contain Confidential Matter, this Order shall govern the use and disclosure of  
5 such documents.

6 The confidentiality obligations imposed by this Order shall remain in  
7 effect until a designating party agrees otherwise in writing or a court orders  
8 otherwise.

9 **7. Modification**

10 This Order may be modified in the event that the parties agree in writing  
11 to a modification of the provisions hereof or such modification is ordered by  
12 this Court. No party shall be prejudiced by having stipulated to this Order.

13 **8. Remedies**

14 The parties expressly acknowledge and agree that all remedies under  
15 FRCP 37 will be available to the Court, in its discretion, to sanction any  
16 violation of this Order.

17 **9. Scope of Protective Order**

18 Nothing in this Order restricts any party from using or disclosing its own  
19 Confidential Matter for any purpose. If a designating party files Confidential  
20 Matter, not under seal and without redaction, its designation shall be deemed  
21 abandoned. Entry of this Order does not foreclose further agreements by the  
22 parties to keep such documents, information, or things confidential or to apply  
23 to the Court for protection of other documents, information, or things.

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**10.    Retention of Jurisdiction**

      The parties and any other person subject to the terms of this Order agree that this Court has and retains jurisdiction during this action and after this action is terminated for the purpose of enforcing this Order.

      ENTERED this 13<sup>th</sup> day of October, 2017.



  
THOMAS O. RICE  
Chief United States District Judge

ATTACHMENT A

**AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE  
ORDER**

I, \_\_\_\_\_, hereby acknowledge that I have received a copy of the Stipulated Protective Order entered in the matter of *Santamour et al. v. UPS Ground Freight, Inc.*, in the United States District Court, Eastern District of Washington, No. 2:17-cv-00196-TOR. I have read and agree to be bound by all of the provisions of the Stipulated Protective Order. I agree (a) not to divulge any Confidential Matter to any other person and (b) not to use any Confidential Matter for any purpose other than this litigation. In addition, I consent to the jurisdiction and contempt power of United States District Court, Eastern District of Washington, with respect to the enforcement of the Stipulated Protective Order.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

STIPULATED PROTECTIVE ORDER  
ATTACHMENT A

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